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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/057,295
Filing Date: October 19, 2001
Appellant(s): FRAENKEL ET AL.

Ronald J. Schoenbaum (Reg. No. 38,297)
For Appellant

EXAMINER'S ANSWER

1. This is in response to the appeal brief filed November 17, 2006 appealing from the Office action mailed October 23, 2006.

Real Party in Interest

2. The appellants' statement identifying the real party in interest contained in the brief is correct.

Related Appeals and Interferences

3. The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

4. The appellants' statement of the status of claims contained in the brief is correct.

Status of Amendments

5. The appellants' statement of the status of amendments after non-final rejection contained in the brief is correct.

Summary of Claimed Subject Matter

6. The appellants' summary of claimed subject matter contained in the brief is correct.

Grounds of Rejection to be Reviewed on Appeal

7. The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

Claims Appendix

8. The appellants' copy of the appealed claims contained in the Appendix to the brief is correct.

Evidence Relied Upon

6,108,700	Maccabee et al.	8-1997
7,039,689	Martija et al.	1-2001
6,462,833	Claiborne	2-1999

Grounds of Rejection

9. The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-9, 11-13, 15-22, 25-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Maccabee et al. (US 6,108,700 A).

INDEPENDENT:

As per **claim 1**, Maccabee teaches a method of monitoring the operation of a deployed web site system, the method comprising:

(a) monitoring response times (see col.3, lines 25-30: "derivation of information necessary... as it applies to availability, performance (response time)") of a web site system (see col.7, lines 13-17: "web-based application server") as seen (see abstract: "as perceived by an end-user"; Fig.9; and col.13, lines 10-11: "user's request for a report or continuous monitoring" & lines 15-16: "Finally, in step 1240, the report is produced") from multiple geographic locations, including locations that are geographically remote from each other and from the web site system (see col.6, lines 62-col.7, line 3: "across a local area network (LAN) that is connected by router to wide area network (WAN)"; and col.7, line 10: "using the Internet");

(b) concurrently with (a), monitoring a plurality of server resource utilization parameters associated with the web site system (see col.3, lines 25-30: "derivation of information necessary... as it applies to... utilization metric"; and col.3, lines 35-38: "application to system utilization") from a computer that is local to the web site system (see col.3, lines 46-48: "allowing their creation to occur as close to their point of origin as possible"); and

(c) automatically (see col.8, lines 44-45: "dynamic fashion") analyzing the response times and server resource utilization as monitored in (a) and (b) (see col.8, lines 3-4: "The processor (210) is used to analyze events (205)") over a selected time period (see col.3, lines 33-35: "the number of events per unit time can also be calculated") to evaluate whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters (see col.3, lines 39-45: "correlate and associate transactions occurring at different measurement points"; col.4, lines 61-63: "associate the event with other events"; and col.8, lines 38-47: "perform the correlation and collation of events in a dynamic fashion").

As per **claim 13**, Maccabee further teaches a system for monitoring performance of a deployed transactional server, the system comprising:

a first agent (see col.9, line 27: "with one Agent (505) per computer") configured to monitor a transactional server over a network, the first agent collecting performance

data including response times of the transactional server (see col.3, lines 25-30: "performance (response time)");

a second agent configured to monitor server resource utilization of the transactional server (see col.3, lines 25-30: "derivation of information necessary... as it applies to... utilization metric"; and col.3, lines 35-38: "application to system utilization"), the second agent collecting data on one or more server resource utilization parameters, wherein the second agent monitors server resource utilization over a time period (see col.3, lines 32-35: "since a single event can be measured, the number of transactions per unit time can also be calculated") in which the first agent monitors the transactional server; and

an analysis component that automatically (see col.8, lines 44-45: "dynamic fashion") detects correlation between response times of the transactional server as monitored by the first agent and particular server resource utilization parameters as monitored by the second agent (see col.3, lines 39-45: "correlate and associate transactions occurring at different measurement points"; col.4, lines 61-63: "associate the event with other events"; and col.8, lines 38-47: "perform the correlation and collation of events in a dynamic fashion").

As per **claim 20**, Maccabee teaches a method for monitoring the performance of a transactional server, the method comprising:

receiving performance data from a plurality of computers (see Fig.9; col.5, lines 50-58: "to retrieve selected transactions"; and col.13, lines 10-11: "user's request for a

report or continuous monitoring until this request is satisfied" and col.9, lines 25-27: "Event Generation (501) component preferably exists on every computer being measured") geographically distributed across a network (see col.6, lines 62-col.7, line 3: "across a local area network (LAN) that is connected by router to wide area network (WAN)"; and col.7, line 10: "using the Internet"), the plurality of computers executing transactions on a transactional server (see col.7, lines 17-36) while monitoring associated response times (see col.3, lines 25-30: "performance (response time)"; and col.7, lines 37-42: "gleaning changes in states that result in the generation of events");

receiving server resource utilization data (see col.3, lines 25-30: "utilization metric"; and col.3, lines 35-38: "application to system utilization") from a computer that monitors server resource utilization of the transactional server during execution of the transactions by the plurality of computers (see col.9, lines 25-27: "The Event Generation (501) component preferably exists on every computer being measured"); and

automatically (see col.8, lines 44-45: "dynamic fashion") analyzing the performance data and the server resource utilization data (see col.8, lines 3-4: "The processor (210) is used to analyze events (205)") to detect correlation between the performance of the transactional server and one or more particular server resource utilization parameters (see col.3, lines 39-45: "correlate and associate transactions occurring at different measurement points"; col.4, lines 61-63: "associate the event with other events"; and col.8, lines 38-47: "perform the correlation and collation of events in a dynamic fashion").

As per **claim 25**, Maccabee teaches a method of monitoring the operation of a deployed transactional server, the method comprising:

(a) monitoring response times of the transactional server (see col.3, lines 25-30: "derivation of information necessary... as it applies to availability, performance (response time)") as seen (see abstract: "as perceived by an end-user"; Fig.9; and col.13, lines 10-11: "user's request for a report or continuous monitoring" & lines 15-16: "Finally, in step 1240, the report is produced") from multiple geographic locations, including locations that are geographically remote from each other and from the transactional server (see col.6, lines 62-col.7, line 3: "across a local area network (LAN) that is connected by router to wide area network (WAN)"; and col.7, line 10: "using the Internet");

(b) concurrently with (a), monitoring a plurality of server resource utilization parameters associated with the transactional server (see col.3, lines 25-30: "derivation of information necessary... as it applies to... utilization metric"; and col.3, lines 35-38: "application to system utilization"); and

(c) programmatically evaluating (see col.8, lines 3-4: "The processor (210) is used to analyze events (205)") whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters (see col.3, lines 39-45: "correlate and associate transactions occurring at different measurement points"; col.4, lines 61-63: "associate the event with other events"; and col.8, lines 38-47: "perform the correlation and collation of events in a

dynamic fashion") over time (see col.3, lines 33-35: "the number of events per unit time can also be calculated").

As per **claim 33**, Maccabee teaches a computer-implemented method of analyzing the performance of a server system, the method comprising:

monitoring a first performance parameter of the server system (see col.3, lines 25-30: "derivation of information necessary... as it applies to availability, performance (response time)") over a period of time to generate a series of values of the first performance parameter (see col.3, lines 32-35: "since a single event can be measured, the number of transactions per unit time can also be calculated" and col.5, lines 12-17: "aggregation of events") wherein the server system responds to requests from clients during said period of time (see col.7, lines 17-36);

monitoring a second performance parameter of the server system (see col.3, lines 25-30: "derivation of information necessary... as it applies to... utilization metric"; and col.3, lines 35-38: "application to system utilization") over said period of time to generate a series of values (see col.5, lines 12-17: "aggregation of events") of the second performance parameter (see col.3, lines 32-35: "since a single event can be measured, the number of transactions per unit time can also be calculated"); and

automatically (see col.8, lines 44-45: "dynamic fashion") analyzing the values of the first and second performance parameters (see col.3, lines 33-35: "the number of events per unit time can also be calculated") to evaluate whether a correlation exists between the first performance parameter and the second performance parameter (see

col.3, lines 39-45: "correlate and associate transactions occurring at different measurement points"; col.4, lines 61-63: "associate the event with other events"; and col.8, lines 38-47: "perform the correlation and collation of events in a dynamic fashion").

DEPENDENT:

As per **claim 2**, which depends on claim 1, Maccabee further teaches wherein (a) comprises monitoring the response times from agent computers in at least some of the multiple geographic locations (see col.9, lines 25-27: "The Event Generation (501) component preferably exists on every computer being measured, with one Agent (505) per computer").

As per **claim 3**, which depends on claim 1, Maccabee further teaches wherein (a) comprises passively monitoring traffic (see col.4, lines 47-61: "Sensors monitor for select changes in state") resulting from actual web site users (see col.6, lines 56-58: "a client (100) is used to initiate a request"; and lines 62-64: "request is acted upon locally") in at least some of the multiple geographic locations (see col.6, lines 62-col.7, line 3: "across a local area network (LAN) that is connected by router to wide area network (WAN)").

As per **claim 4**, which depends on claim 1, Maccabee further teaches wherein (a) comprises generating page requests from a data center, and sending the page requests to the web site system via Internet points of presence located in at least some of the multiple geographic locations (see col.6, line 56-col.7, line 36).

As per **claim 5**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a web server (see col.7, lines 8-16: "web-based application servers").

As per **claim 6**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of an application server (see claim 1 and claim 5 rejections above).

As per **claim 7**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a database server (see Fig.1B).

As per **claim 8**, which depends on claim 1, Maccabee further teaches wherein (b) comprises monitoring at least one server resource utilization parameter of a network device (see col.3, lines 39-45: "availability and performance can be assessed at select points along the path").

As per **claim 9**, which depends on claim 8, Maccabee further teaches wherein the network device is a router (see col.6, line 67-col.7, line 1: "router")

As per **claim 11**, which depends on claim 1, Maccabee teaches of further comprising applying a statistical algorithm (see col.13, line 18: "algorithm") to a sequence of response time measurements resulting from (a) (see col.15, lines 38-40) to automatically detect degradation in performance (see col.8, lines 60-62: "retrieval and manipulation of transactions to glean information relating to availability and performance").

As per **claim 12**, which depends on claim 11, Maccabee teaches of further comprising processing (see col.8, lines 3-4: "analyze events") server resource utilization measurements resulting from (b) (see col.3, lines 25-30: "utilization metrics") to identify at least one server resource parameter having a correlation with the degradation in performance (see col.3, lines 25-27: "derivation of information necessary for correlating and collating select measurement events").

As per **claim 15**, which depends on claim 13, Maccabee further teaches wherein the first agent sends request messages to the transactional server to measure the response times (see col.4, lines 19-22: "add measurement sources").

As per **claim 16**, which depends on claim 13, Maccabee further teaches wherein the first agent passively monitors traffic between client computers and the transactional server to measure the response times (see col.4, lines 47-61: "Sensors monitor for select changes in state").

As per **claim 17**, which depends on claim 13, Maccabee teaches of further comprising report generating component that generates reports associating the response times with the server resource utilization parameters by displaying the response times and the server resource utilization parameters on a time-synchronized graph to permit a human operator to evaluate correlation detected by the analysis component (see Fig.1D, #400; col.8, line 58-col.9, line 9; and col.13, lines 9-16).

As per **claim 18**, which depends on claim 13, Maccabee further teaches wherein the second agent is configured to monitor server resource utilization of a database server (see Fig.1B).

As per **claim 19**, which depends on claim 13, Maccabee teaches of further comprising an analysis component that automatically detects correlations between response times and server resource utilization parameters, wherein the analysis component analyzes sequence of values of said response time to automatically detect degradations in the performance of the transactional server (see col.8, lines 3-4).

As per **claim 21**, which depends on claim 20, Maccabee further teaches wherein the performance data includes time stamps for associating the performance data and the server resource utilization data (see col.4, lines 61-63: "event contains a time-stamp").

As per **claim 22**, which depends on claim 20, Maccabee further teaches wherein the server resource utilization data includes central process unit (CPU) utilization data associated with the transactional server (see col.1, lines 21-22: "CPU utilization").

As per **claim 26**, which depends on claim 25, Maccabee further teaches wherein (c) comprises automatically analyzing response time data and server resource utilization data resulting from (a) and (b), respectively (see col.5, lines 8-17: "analyzing events" and "further analysis of the correlation data").

As per **claim 27**, Maccabee teaches of further comprising displaying for a selected time window, a graph of the response time and a graph of at least one of the server resource utilization parameters (see Fig.14 and col.9, lines 2-10).

As per **claim 28**, which depends on claim 26, Maccabee further teaches wherein (c) comprises analyzing response time data and server resource utilization data resulting from (a) and (b) with an automated analysis system that automatically detects

correlations (see col.3, lines 35-45: "correlate and associate transactions occurring at different measurement points"; and col.5, lines 8-17: "analyzing events" and "further analysis of the correlation data").

As per **claim 29**, which depends on claim 25, Maccabee further teaches wherein the transactional server is a web site system (see col.7, lines 13-17: "web-based application server").

As per **claim 30**, which depends on claim 1, Maccabee teaches of further comprising, in response to detecting in (c) a correlation between response time degradation and a particular server resource utilization parameter, providing a visual representation of said correlation to a user (see Fig.1D, #400; col.8, line 58-col.9, line 9; and col.13, lines 9-16).

As per **claims 31, 32, and 38**, which respectively depend on claims 1, 20, and 33, Maccabee further teaches a computer system programmed to perform the method (col.7, lines 38-51: "business transaction's software").

As per **claim 34**, which depends on claim 33, Maccabee further teaches wherein the first performance parameter is a response time parameter (see col.3, lines 25-30: "performance (response time)").

As per **claim 35**, which depends on claim 34, Maccabee further teaches wherein the second performance parameter is a server resource utilization parameter (see col.3, lines 25-30: "utilization metric"; and lines 35-38: "application to system utilization").

As per **claim 36**, which depends on claim 34, Maccabee further teaches wherein the second performance parameter is an operating system resource parameter (see col.1, lines 21-22: "CPU utilization").

As per **claim 37**, which depends on claim 33, Maccabee further teaches wherein the step of automatically analyzing the values of the first and second performance parameters is performed in response to a user action (see col.3, lines 62-67: "enabling customers to select the level of transaction decomposition they wish to view" and col.7, lines 8-12: "transaction initiated within a web browser to purchase an item using the Internet").

As per **claim 39**, Maccabee further teaches a computer program, which embodies the method of Claim 33, represented in computer storage (see col.16, lines 32-37).

11. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee et al. (US 6,108,700 A) in view of Martija et al. (US 7,039,689 B2).

As per **claim 10**, which depends on claim 8, Maccabee does not explicitly teach wherein the network device is a bridge.

Martija teaches of a network device that is a bridge (see col.3, lines 49-55).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Martija so that the network device is a bridge. One would be motivated to do so because Maccabee teaches of assessing "availability and performance" at "different measurement points

within the path taken" (see col.3, lines 39-45) and one of ordinary skill in the art include bridges, routers, switches, or the like to be employed within a path of data communication.

As per **claim 14**, which depends on claim 13, Maccabee does not explicitly teach wherein the first agent is configured to monitor network hop delays.

Martija teaches of monitoring network hop delays (see col.5, lines 48-51)

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Martija to monitor network hop delays. One would be motivated to do so because Maccabee teaches of enabling customers to view which components are introducing delays and faults that adversely affect the transaction (see col.3, lines 65-67).

12. Claim 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maccabee et al. (US 6,108,700 A) in view of Claiborne (US 6,462,833 B1)

As per **claim 23**, Maccabee does not explicitly teach wherein the server resource utilization data includes memory allocation data.

Claiborne teach of resource utilization data includes memory allocation data (see col.7, lines 15-32: "size (i.e., number of addresses) of the portion of memory that has been allocated for such storage").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Claiborne so that server resource utilization data includes memory allocation data. One would be

motivated to do so because Maccabee teaches that the Sensor generates events and "any extra data necessary to uniquely identify the event" (see col.7, lines 54-60).

As per **claim 24**, which depends on claim 20, Maccabee does not explicitly teach of server resource utilization data includes at least one of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data.

Claiborne teach of server resource utilization data includes at least one of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data (see col.7, lines 15-32: "extent of memory allocation... communications traffic").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Maccabee in view of Claiborne so that server resource utilization data includes at least one of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data. One would be motivated to do so because Maccabee teaches that the Sensor generates events and "any extra data necessary to uniquely identify the event" (see col.7, lines 54-60).

Response to Argument

13. The examiner summarizes the various points raised by the appellant and addresses replies individually.

14. As per appellants' arguments filed November 17, 2006, the appellant(s) argue in substance:

(a) That the anticipation rejection of independent **claim 1** is improper because Maccabee does not disclose monitoring response times of a web site system "as seen from multiple geographic locations, including locations that are geographically remote from each other".

In response to (a), Maccabee teaches that the invention pertains to measuring the response time of an "application in a client-server or **Internet** environment) **as perceived** by an end-user" (see abstract). Maccabee teaches correlating and collating select measurement events that describe a business transaction via the **Internet** (see col.7, lines 8-10: "using the Internet") "as it applies to availability, performance (**response time**), capacity, and utilization metrics" (see col.3, lines 25-30). Further support can be found throughout the Maccabee patent. For example, Maccabee teaches that the system comprises various networks such as LAN, WAN (see col.7, line 1), and the Internet (see col.7, line 10). Clearly, WAN and the Internet are well known to one or ordinary skill in the art to encompass devices in various geographic remote locations.

Furthermore, monitoring is performed within these networks initiated by users (see col.13, lines 11-12) and a report is generated to the user ("**as seen**") (see col.13, lines 14-16). It is improper to assert that all users in the Maccabee patent are located local to the monitoring system when Maccabee teaches otherwise. Therefore, the

combination of the reference locations provided above and in the rejection set forth explicitly teaches and suggests monitoring the response times... "as seen from multiple geographic locations, including locations that are geographically remote from each other".

(b) That the anticipation rejection of independent **claim 1** is improper because Maccabee does not disclose "automatically analyzing the response times and server resource utilization parameters as monitored in (a) and (b) over a selected time period to evaluate whether a correlation exists between changes in the response time and changes in values of the plurality of server resource utilization parameters".

In response to (b), Maccabee teaches a processor used for analyzing events (see col.8, lines 3-4) and that the number of **events per unit time** can be calculated (see col.3, lines 34-35). Maccabee also teaches that the system has capabilities that "correlate and associate transactions occurring at different measurements points" within a transaction (client request to server response). Therefore, since Maccabee teaches that "correlation data can be any data... that associates the event with other events" (see col.4, line 67-col.5, line 3) and "correlation data is used by the system to associate the event with other events" (see col.8, lines 29-32), it is clear that not only is Maccabee's system evaluating if a "correlation exists between changes in response time and changes in values of the plurality of server resource utilization parameters", but Maccabee's system is evaluating if a correlation exits between any event (i.e. availability, response time, capacity, and utilization) (see col.3, lines 25-30).

To argue that because Maccabee's term "correlate" refers "to the process of identifying and aggregating events and transactions that are related to one another" and thus teaches away from the claimed invention wherein the claim limitation does not explicitly recite that the "change in values of the plurality of server resource utilization parameter" and the "change in response time" is unrelated, is improper. In fact, it is inherent that the two events ("change in response time" and "change in values of the plurality of server resource utilization parameters") are related. Maccabee also teaches that the two are related (see col.1, lines 27-29). One of ordinary skill in the art would agree that one clearly affects the other and are therefore related.

The combination of the reference locations provided above and in the rejection set forth explicitly teaches and suggests automatically analyzing the response times and server resource utilization as monitored in (a) and (b) over a selected time period to evaluate whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters.

(c) That the rejection of dependent **claim 11** is improper because it depends on claim 1 and because Maccabee does not disclose "applying a statistical algorithm to a sequence of response time measurements resulting from (a) to automatically detect a degradation in performance".

In response to (c), Maccabee teaches applying a statistical algorithm (see col.13, line 18: "algorithm") to a sequence of response time measurements resulting from (a) (see col.15, lines 38-40). Maccabee also teaches detecting availability and

performance (col.8, lines 60-62: "retrieval and manipulation of transactions to glean information relating to availability and performance. For these reasons claim 11 is explicitly taught by Maccabee.

(d) That the rejection of dependent **claim 12** is improper because it depends on claim 11 and because Maccabee does not disclose "processing server resource utilization measurements resulting from (b) to identify at least one server resource parameter having a correlation with the degradation in performance".

In response to (d), Maccabee teaches processing the events (see col.8, lines 3-4: "analyze events"). These events include "availability, performance (response time), capacity and utilization metrics" (see col.3, lines 25-29). Maccabee further teaches that all these events are correlated and collated (critically compared) to "describe the behavior of end-to-end transactions" (see col.3, lines 25-28). Therefore, whether the processing of events is a resource utilization measurement or response time measurement, Maccabee explicitly teaches correlating the events to any other event regardless of whether the event is an improvement or degradation. For these reasons claim 12 is explicitly taught by Maccabee.

(e) That the rejection of dependent **claim 30** is improper because it depends on claim 1 and because Maccabee does not disclose "in response to detecting in (c) a correlation between response time degradation and a particular server resource utilization parameter, providing a visual representation of said correlation to a user".

In response to (e), Maccabee teaches detecting (c) (see argument (b) and response above). Maccabee also teaches presenting a report via a Report Generation (400) facility in both printed and interactive formats (see col.9, lines 2-5). Maccabee teaches that this report can be viewed as "**graphical aggregate**" or "**in detail decomposition**" (see Fig.14 and col.9, lines 5-9). Clearly such teaching explicitly teaches that all detailed data including any correlations are presented. For these reasons claim 30 is explicitly taught by Maccabee.

(f) That the rejection of independent **claim 13** is improper because Maccabee does not disclose "an analysis component that automatically detects correlation between response times of the transactional server as monitored by the first agent and particular server resource utilization parameters as monitored by the second agent".

In response to (f), see **response to (b)** above.

(g) That the rejection of dependent **claim 15** is improper because it depends on claim 13 and because Maccabee does not disclose "wherein the first agent sends request messages to the transactional server to measure the response times".

In response to (g), Maccabee teaches that measurement sources can be added dynamically without adversely affecting the system (see col.4, lines 20-22). Therefore since Maccabee teaches Agents, it would be implicit that Agents are employed as measurement sources since each computer comprises an agent (see col.9, line 27).

(h) That the rejection of dependent **claim 17** is improper because it depends on claim 13 and because Maccabee does not disclose "further comprising report generating component that generates reports associating the response times with the server resource utilization parameters by displaying the response times and the server resource utilization parameters on a time-synchronized graph to permit a human operator to evaluate correlation detected by the analysis component".

In response to (h), see **response to (e)** above.

(i) That the rejection of dependent **claim 19** is improper because it depends on claim 13 and because Maccabee does not disclose "wherein the analysis component analyzes sequence of values of said response time to automatically detect degradations in the performance of the transactional server".

In response to (i), Maccabee clearly teaches a processor used for analysis of events to further deduce changes in states (see col.8, lines 3-4). This deduction of changes in state according to the patent, clearly include performance (see col.8, lines 4-9: "actions occurring within the... software and/or hardware"). For these reasons claim 19 is explicitly taught by Maccabee.

(j) That the rejection of independent **claim 20** is improper because Maccabee does not disclose "receiving performance data from a plurality of computers

geographically distributed across a network, the plurality of computers executing transactions on a transactional server while monitoring associated response times".

In response to (j), see **response to (a)** above. Furthermore, Maccabee teaches that each computer includes an Event Generation (501) component comprising an Agent (see col.9, lines 25-27) and an Event Generator (600) (see Fig.3). This Event Generator generates events whenever a change in state is detected (see col.10, lines 8-11). Therefore since it has been established that the network consists of the Internet (see **response to (a)**) and plurality of devices reside on the Internet in various geographic locations, Maccabee clearly teaches that while the transaction is executing on a transaction server (see col.7, lines 17-36), plurality of computers in geographic disparate locations can generate correlated and collated events as state change is detected. For these reasons claim 20 is explicitly taught by Maccabee.

(k) That the rejection of independent **claim 20** is improper because Maccabee does not disclose "automatically analyzing the performance data and the server resource utilization data to detect correlation between the performance of the transactional server and one or more particular server resource utilization parameters".

In response to (k), see **response to (b)** above

(l) That the rejection of dependent **claim 22** is improper because it depends on claim 20 and because Maccabee does not disclose "wherein the server resource

utilization data includes central process unit (CPU) utilization data associated with the transactional server".

In response to (l), the applicant(s) assert that the "CPU utilization" is different because it does not disclose CPU utilization in the context of other limitations of claims 20 and 22. The examiner disagrees. The CPU utilization is explained as a performance metric, which clearly pertains to the rest of the patent. Maccabee does not restrict the performance metric, namely utilization metric, to specific memory or CPU. Therefore, it is implicit that the utilization metric encompasses CPU utilization. For these reasons claim 22 is explicitly taught by Maccabee.

(m) That the rejection of independent **claim 25** is improper because Maccabee does not disclose "(a) monitoring response times of the transactional server as seen from multiple geographic locations, including locations that are geographically remote from each other and from the transactional server".

In response to (m), see **response to (a)** above.

(n) That the rejection of independent **claim 25** is improper because Maccabee does not disclose "programmatically evaluating whether a correlation exists between changes in the response times and changes in values of the plurality of server resource utilization parameters over time".

In response to (n), see **response to (b)** above.

(o) That the rejection of independent **claim 33** is improper because Maccabee does not disclose "automatically analyzing the values of the first and second performance parameters to evaluate whether a correlation exists between the first performance parameter and the second performance parameter".

In response to (o), see **response to (b)** above.

(p) That the rejection of dependent **claim 34** is improper because it depends on claim 33 and because Maccabee does not disclose, "wherein the first performance parameter is a response time parameter".

In response to (p), Maccabee clearly teaches of a response time parameter (see col.3, line 29).

(q) That the rejection of dependent **claim 35** is improper because it depends on claim 33 and because Maccabee does not disclose "evaluating whether a correlation exists between a response time parameter and a server resource utilization parameter" as required by the combinations of claims 33-35.

In response to (q), Maccabee clearly teaches the above limitation (see **response to (o)**).

(r) That the rejection of dependent **claim 36** is improper because it depends on claim 33 and because Maccabee does not disclose "evaluating whether a correlation exists between a response time parameter and an operating system resource utilization parameter" as required by the combinations of claims 33, 34, and 36.

In response to (r), Maccabee clearly teaches the above limitation (see **response to (o)**).

(s) That the obviousness rejection of dependent **claim 10** is improper at least because Martija does not cure the deficiencies of argument **(a)** above with respect to claim 1.

In response to (s), Maccabee clearly and explicitly teaches the limitations of claim 1 and therefore, Martija is not relied upon to teach any element of claim 1. For the reasons and the rejection set forth above claim 10 is obvious over Martija.

(t) That the obviousness rejection of dependent **claim 10** is improper at least because Martija does not cure the deficiencies of argument **(b)** above.

In response to (t), Maccabee clearly and explicitly teaches the limitations of claim 1 and therefore, Martija is not relied upon to teach any element of claim 1. For the reasons and the rejection set forth above claim 10 is obvious over Martija.

(u) That the obviousness rejection of dependent **claims 23 and 24** are improper at least because Martija does not cure the deficiencies of argument **(k)** above.

In response to (u), Maccabee clearly and explicitly teaches the limitations of claim 20 and therefore, Martija is not relied upon to teach any element of claim 20. For the reasons and the rejection set forth above claims 23 and 24 are obvious over Martija.

(v) That the obviousness rejection of dependent **claim 24** lacks any teaching, suggestion or motivation to combine.

In response to (v), that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case Maccabee teaches of utilization metrics. This utilization metrics is not limited to a single utilization, but rather encompasses utilization of all devices and its components at various points along the end-to-end path. Therefore, one of ordinary skill in the art would include memory allocation data in server resource utilization data if the memory were allocated in the server resource because Maccabee teaches of including "any extra data necessary to uniquely identify the event" (see col.7, lines 54-60). Similarly, one of ordinary skill in the art would include any of the following: hits per second data, requests queued data, current connections data, connection attempts data, or disk utilization data within server resource utilization data if these operations were performed because Maccabee teaches of including "any extra data necessary to uniquely identify the event" (see col.7, lines 54-60).

Related Proceeding(s) Appendix

15. There are no copies of any decisions rendered by a court or the Board in any proceedings.

16. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michael Won

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